

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:12-HC-2008-BR

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	ORDER
v.)	
)	
VERNON DALE WOOD,)	
)	
Respondent.)	

On 9 January 2012, petitioner United States of America (“the government”) initiated this proceeding seeking to have respondent Vernon Dale Wood (“respondent”) civilly committed as a sexually dangerous person under the Adam Walsh Child Protection and Safety Act of 2006 (“Adam Walsh Act”), codified at 18 U.S.C. §§ 4247-4248. Pursuant to 18 U.S.C. § 4247(d), the court conducted an evidentiary hearing in this matter on 30 July 2012.

I. BACKGROUND

Respondent was fifty-nine years old at the time of the evidentiary hearing. With regard to his sexual criminal history, respondent was arrested in 1976 at the age of twenty-three for first and second degree promoting prostitution. (Gov’t Exs. 5; 20 at 7.) According to the criminal information, the first degree promoting prostitution charge involved a female prostitute under the age of eighteen. (Gov’t Ex. 5.) Both charges were subsequently dismissed. (Gov’t Ex. 20 at 7; Resp’t Ex. 4.)

In 1977, respondent was convicted of promoting and compelling prostitution, the latter charge involving a sixteen-year-old female. (Gov’t Exs. 6-7; 20 at 8-9.) He received consecutive sentences of imprisonment of eighteen months for the promoting prostitution offense

and three years for the compelling prostitution offense. (Gov't Exs. 7; 20 at 8.)

At age thirty-four, respondent was charged with sexual abuse in the second degree, and a jury convicted him of this offense in April 1989. (Gov't Exs. 8-9; 20 at 11-12.) The jury found respondent guilty of engaging in sexual intercourse with a ten-year-old girl at her mother's house during the fall of 1987. (Id.) Respondent was sentenced to a term of imprisonment of twenty-five years. (Gov't Exs. 10; 20 at 11.) His sentence was discharged in January 2001. (Gov't Ex. 20 at 11.)

In April 2001, at age forty-seven, respondent was charged with and later pled guilty to failure to comply with sex offender registry requirements. (Id. at 12.) He was sentenced to a two-year term of imprisonment, suspended to probation, and was ordered to undergo community sex offender treatment. (Id.) His probation was subsequently revoked, and the two-year prison sentence was reinstated, following his arrest in March 2002 for supplying alcohol to minors. (Id.; Gov't Ex. 11 at 001036.) Thereafter, respondent pled guilty to one count of supplying alcohol to minors, and he received a sentence of a fine and twenty-four hours in jail with credit for time served. (Gov't Exs. 12; 20 at 13.)

In 2004, respondent faced charges in the state of Iowa for lascivious acts with a child and for being a felon in possession of a firearm. (Gov't Exs. 17; 20 at 14-15.) These charges were ultimately dismissed because "the State of Iowa deferred to the United States Attorney's Office for prosecution of federal violations of law." (Gov't Ex. 22 at 1.) Following the dismissal of the state charges, respondent was federally indicted in October 2004 as a felon in possession of a firearm and ammunition. (Gov't Ex. 20 at 3.)

In February 2005, at age fifty-one, respondent was charged in the state of Iowa with

seven counts of sexual abuse in the second degree in relation to acts allegedly committed over the course of three years against a minor female under the age of twelve. (Gov't Exs. 13; 20 at 15.)¹ Both the government and respondent agree that these charges were later dismissed because respondent was being prosecuted on federal weapons charges. (Gov't Proposed Findings of Fact and Conclusions of Law, DE # 48, at 8 ¶ 7; Resp't Proposed Findings of Fact and Conclusions of Law, DE # 49, at 4 ¶ 15.)

In May 2006, a jury found respondent guilty of the federal charges of felon in possession of a firearm and ammunition. (Gov't Ex. 20 at 3.) He was eventually sentenced to one hundred months imprisonment followed by a three-year term of supervised release. (Gov't Ex. 29.)

At the evidentiary hearing, the government presented evidence relating to additional reports that respondent engaged in inappropriate sexual behavior with prepubescent girls. (See, e.g., Gov't Proposed Findings of Fact and Conclusions of Law, DE # 48, at 6 ¶ 4, 7 ¶ 5; Gov't Ex. 4 at 5-6.) Respondent has consistently denied the commission of any act of child molestation and has specifically maintained his innocence with regard to his 1989 conviction for sexual abuse in the second degree. (See, e.g., Gov't Ex. 2 at 55; Resp't Ex. 1 at 8; Resp't Proposed Findings of Fact and Conclusions of Law, DE # 49, at 9 ¶ 35.)

Respondent has also been convicted of numerous non-sexual offenses, including larceny/shoplifting, interference with a police officer, malicious mischief, simple assault, second degree assault with a deadly weapon, driving while under the influence, driving without a valid license, second degree escape from the Multnomah County Correctional Institution, resisting

¹ The court notes that in the complaint/affidavit that was filed in state court with respect to these charges, the year is incorrectly shown as 2004 in the preprinted notary portion of the affidavit. (Gov't Ex. 13.) This is clearly an error, as it is evident from the face of the document that it was filed on 18 February 2005.

arrest, and harassment. (Gov't Exs. 4 at 3-4; 20 at 6-13; Resp't Proposed Findings of Fact and Conclusions of Law, DE # 49, at 3-4.) In addition, respondent has received various incident reports while in federal custody, including infractions for possessing a dangerous weapon, possessing unauthorized items, being in an unauthorized area, fighting with another person, and making, possessing, or using intoxicants. (Gov't Exs. 23-28; 30-31; Resp't Ex. 1 at 9; Resp't Proposed Findings of Fact and Conclusions of Law, DE # 49, at 6 ¶ 23.)

II. DISCUSSION

The Adam Walsh Act provides for the civil commitment of “sexually dangerous person[s].” 18 U.S.C. § 4248. Under 18 U.S.C. § 4247(a)(5), a “sexually dangerous person” is one “who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others.” A person is “sexually dangerous to others” if he “suffers from a serious mental illness, abnormality, or disorder as a result of which he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.” 18 U.S.C. § 4247(a)(6).

Under the Adam Walsh Act, the government has the burden of proving that respondent is sexually dangerous by clear and convincing evidence. 18 U.S.C. § 4248(d). “The clear and convincing evidence standard is an ‘intermediate standard,’ lying somewhere ‘between preponderance of the evidence and proof beyond a reasonable doubt.’” United States v. Hunt, 643 F. Supp. 2d 161, 179 (D. Mass. 2009) (quoting Addington v. Texas, 441 U.S. 418, 425 (1979)). The government must produce “[e]vidence indicating that the thing to be proved is highly probable or reasonably certain.” Id. (alteration in original) (quoting Black’s Law Dictionary 596 (8th ed. 2004)).

Thus, in order to prove that respondent is a “sexually dangerous person,” the government must prove three elements by clear and convincing evidence: (1) that respondent engaged in or attempted to engage in sexually violent conduct or child molestation; (2) that respondent suffers from a serious mental illness, abnormality, or disorder; and (3) that, as a result of the serious mental illness, abnormality, or disorder, respondent would have serious difficulty in refraining from sexually violent conduct or child molestation if he were to be released. See 18 U.S.C. § 4247(a)(5)-(6); 18 U.S.C. § 4248.

Three experts testified at the evidentiary hearing. Tanya Cunic, Psy.D., and Harry Hoberman, Ph.D., testified on behalf of the government. Fabian Saleh, M.D., testified on behalf of respondent as an additional examiner selected pursuant to 18 U.S.C. § 4247(b). (See DE # 10.) Respondent did not testify at the evidentiary hearing. The only other witness who testified was respondent’s sister, Eva Sue Toney.

A. Child Molestation

The court finds that the first criterion for commitment under the Adam Walsh Act, that respondent has “engaged or attempted to engage in sexually violent conduct or child molestation” in the past, is satisfied. 18 U.S.C. § 4247(a)(5). In 1989, a jury convicted respondent of sexual abuse in the second degree, and all three experts in this case agree that this conviction constitutes clear and convincing evidence that respondent engaged in child molestation.

B. Serious Mental Illness, Abnormality, or Disorder

To meet its burden of establishing that respondent is “sexually dangerous to others,” the government must also prove that respondent “suffers from a serious mental illness, abnormality,

or disorder.” 18 U.S.C. § 4247(a)(6). In this case, the government contends that respondent suffers from pedophilia. The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (“DSM-IV-TR”) lists the criteria of this disorder as follows:

A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger).

B. The person has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.

C. The person is at least age 16 years and at least 5 years older than the child or children in Criterion A.

DSM-IV-TR § 302.2 at 572.

At the evidentiary hearing, Dr. Cunic and Dr. Hoberman testified that respondent has a long history of inappropriate sexual behavior with prepubescent girls. Both Dr. Cunic and Dr. Hoberman have diagnosed respondent as suffering from pedophilia, sexually attracted to females, non-exclusive type. (Gov’t Exs. 2 at 61-62; 4 at 7-8.) In rendering this diagnosis, both experts testified that they relied on respondent’s 1989 conviction for sexual abuse of a ten-year-old girl. They also considered the fact that a charge of lascivious acts with a child was brought against respondent in Iowa in 2004. (See Gov’t Exs. 17; 20 at 14-15.) Although this charge was eventually dismissed, the prosecuting attorney explicitly stated in a document filed with the state court that “there was sufficient evidence available to convict the Defendant of the charge[] brought against him” (Gov’t Ex. 22 at 1; see also Gov’t Ex. 2 at 24.)

Dr. Cunic and Dr. Hoberman also took into account the seven charges of sexual abuse in the second degree that were brought against respondent in 2005. (See Gov’t Exs. 13; 20 at 15.) In relation to these charges, the government’s experts further considered a 2005 Child Protective

Assessment made by the Iowa Department of Human Services in which the allegations of sexual abuse made by the minor female victim were found to be credible by a preponderance of the evidence.² (See Gov't Exs. 2 at 20, 22; 4 at 5.)

In determining that respondent suffers from pedophilia, the government's experts considered additional information indicating that respondent has made sexually explicit comments to and sexual advances toward other prepubescent females. For example, in 2003, respondent pled guilty to supplying alcohol to minors (see Gov't Exs. 12; 20 at 13), including three minor females around the ages of eleven to thirteen. Both Dr. Cunic and Dr. Hoberman testified that respondent allegedly hugged these girls, made sexual remarks to them, touched one of them in the breast area and kissed her on the lips, and touched another girl on the buttocks. (See also Gov't Exs. 2 at 14-15; 4 at 5.)

Dr. Cunic and Dr. Hoberman further testified that pedophilia is a chronic condition for respondent given the underlying facts and circumstances of this case, including the lack of indicators that this mental disorder has abated. Dr. Cunic concluded that between 1987 and 2004, respondent "has actively propositioned minor females for sex or has engaged in sexual activity with minor females. This demonstrates a pattern of sexual interest in minor females spanning almost 20 years." (Gov't Ex. 4 at 7.)

Respondent argues that the court should not credit the opinions of Drs. Cunic and Hoberman because both experts relied on uncharged and adjudicated conduct in diagnosing him with pedophilia. (See Resp't Proposed Findings of Fact and Conclusions of Law, DE # 49,

² Dr. Cunic and Dr. Hoberman also testified that the 2005 Child Protective Assessment contained other founded reports of sexual abuse involving respondent, including a report that respondent had touched the genitals of an eleven-year-old girl on two occasions. (See also Gov't Exs. 2 at 16; 4 at 6.)

at 10-11 ¶ 39.) Respondent contends that such conduct does not constitute clear and convincing evidence that he has suffered from or presently suffers from a mental illness. (Id.) At the evidentiary hearing, Dr. Saleh testified in support of this argument and concluded that the allegations made against respondent that did not result in convictions deserve no weight in evaluating respondent's sexual history because there is a lack of evidence in the record to corroborate these allegations and because respondent has categorically denied all accusations of child molestation.

Here, the court finds that each uncharged or unadjudicated allegation of sexual misconduct, in and of itself, is not entitled to much weight, but when combined in the aggregate, the allegations are entitled to significant evidentiary weight. As Dr. Hoberman emphasized at the evidentiary hearing, the multiple accusations of sexual misconduct that occurred between 2002 and 2005 were independently made by several minor females. Moreover, both Dr. Cunic and Dr. Hoberman testified that there was striking consistency in the allegations made by two of the girls in that each of them stated that respondent wanted to place his penis "on" her but not "in" her. The government's experts also explained that it appeared that the local prosecutor decided to stop pursuing the charge of lascivious acts with a child that was brought against respondent in 2004 not because of a lack of evidence but because the charge was overshadowed by respondent's prosecution on federal charges relating to his use of a firearm on the date of the alleged sex offense. Dr. Hoberman has additionally stated that during their interview, respondent had difficulty accounting for the various independent reports of inappropriate sexual conduct that were made by his alleged victims.³ (Gov't Ex. 2 at 55.) For these reasons, both Dr.

³ During the interview with Dr. Hoberman, respondent attempted to explain away all of the accusations that
(continued...)

Cunic and Dr. Hoberman determined that the uncharged and unadjudicated allegations, when combined with respondent's 1989 conviction for sexual abuse in the second degree, were entitled to great weight, and the court credits their testimony with respect to this issue. In the court's judgment, the clear weight of the evidence is that respondent meets the criteria for a clinical diagnosis of pedophilia.

Furthermore, the court simply cannot credit Dr. Saleh's testimony with respect to this issue. Dr. Saleh does not appear to have measured or tempered his reliance on respondent's denial of the uncharged and unadjudicated sexual conduct despite respondent's lack of a credible explanation for the multiple independent accusations that were made against him. Dr. Saleh also appears to have ignored certain pieces of evidence in this case, including the report of the prosecuting attorney that "there was sufficient evidence available to convict" respondent of the charge of lascivious acts with a child. (Gov't Ex. 22 at 1.) Accordingly, the court finds that the government has proven by clear and convincing evidence that respondent suffers from pedophilia.

Next, the court considers whether respondent suffers from a personality disorder. All three experts agree that respondent suffers from some type of personality disorder, but they disagree on the exact diagnosis. Dr. Hoberman has diagnosed respondent with antisocial

³(...continued)

have been leveled against him. He stated that his alleged victims were seeking to retaliate against him or were manipulated into making false allegations. (Gov't Ex. 2 at 55-56.) With respect to his 1989 conviction for sexual abuse in the second degree, he maintained that he was framed by the victim's brother. (Id. at 13.) Respondent also reported to Dr. Hoberman that all of the sexual abuse allegations that were made against him in Decatur County, Iowa somehow resulted from the efforts of a particular sheriff's deputy who did not like him. (Id. at 24.) In addition, respondent asserted that one of the alleged victims made false accusations because she was angry with him, and he also claimed that this particular victim had not been sexually abused by him but by her mother's ex-husband. (Id. at 23.)

personality disorder.⁴ (Gov't Ex. 2 at 62-64.) In contrast, Dr. Cunic and Dr. Saleh did not offer a full diagnosis of antisocial personality disorder due to a lack of evidence that respondent had a conduct disorder before the age of fifteen. Instead, both Dr. Cunic and Dr. Saleh have diagnosed respondent as suffering from a personality disorder, not otherwise specified,⁵ with antisocial traits. (Gov't Ex. 4 at 8; Resp't Ex. 1 at 9.)

The court finds that, at a minimum, respondent suffers from personality disorder, not otherwise specified, with antisocial traits. As stated by Dr. Saleh, "[t]his diagnosis reflects primarily a long-standing and maladaptive pattern of antisocial, irresponsible, and criminal behaviors." (Resp't Ex. 1 at 9.) There is no doubt that respondent has failed to conform to social norms with respect to lawful behaviors as evidenced by his extensive non-sexual criminal history. Respondent has acted impulsively in the past and has also demonstrated aggressiveness, as indicated by his multiple convictions for assault. (See, e.g., Gov't Ex. 20 at 7-11; Resp't Proposed Findings of Fact and Conclusions of Law, DE # 49, at 3.) Respondent has continued

⁴ As described in the DSM-IV-TR, antisocial personality disorder is characterized by a pervasive pattern of disregard for and violation of the rights of others occurring since age fifteen and is indicated by at least three of seven criteria, including: (1) failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest; (2) deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure; (3) impulsivity or failure to plan ahead; (4) irritability and aggressiveness, as indicated by repeated physical fights or assaults; (5) reckless disregard for the safety of self or others; (6) consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations; and (7) lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another. DSM-IV-TR § 301.7 at 706. Additionally, there must be evidence of conduct disorder prior to age fifteen. Id.

⁵ According to the DSM-IV-TR:

Personality Disorder Not Otherwise Specified is a category provided for two situations: 1) the individual's personality pattern meets the general criteria for a Personality Disorder and traits of several different Personality Disorders are present, but the criteria for any specific Personality Disorder are not met; or 2) the individual's personality pattern meets the general criteria for a Personality Disorder, but the individual is considered to have a Personality Disorder that is not included in the Classification (e.g., passive-aggressive personality disorder).

DSM-IV-TR at 685.

his irresponsible behavior while in federal custody, incurring various disciplinary infractions for conduct such as fighting with another person in 2008, and making, possessing, or using intoxicants on more than one occasion in 2009.⁶ (Gov't Exs. 25-26, 28.) Dr. Hoberman has also stated that respondent's psychological testing scores indicate that he is presently characterized by antisocial traits. (Gov't Ex. 2 at 89.) Thus, the government has shown by clear and convincing evidence that respondent suffers from personality disorder, not otherwise specified, with antisocial traits.

Furthermore, the court finds that respondent's pedophilia and his personality disorder are conditions that constitute a serious mental illness, abnormality, or disorder for the purposes of the Adam Walsh Act. Pedophilia is a condition that "the psychiatric profession itself classifies as a serious mental disorder." Kansas v. Hendricks, 521 U.S. 346, 360 (1997). It is also clear that both of these conditions have caused significant impairment in many areas of respondent's life and have caused harm to others.

In summary, the court concludes that the government has proven by clear and convincing evidence that respondent suffers from pedophilia and from a personality disorder, not otherwise specified, with antisocial traits, and that both of these conditions constitute a serious mental illness, abnormality, or disorder under the Adam Walsh Act.⁷

⁶ Respondent argues that although he has received disciplinary infractions while in custody, he has never incurred one for a sexual-related offense. (See, e.g., Resp't Proposed Findings of Fact and Conclusions of Law, DE # 49, at 6 ¶ 24, 12 ¶ 45.) However, this may be due to his lack of access to prepubescent females rather than to his personal growth.

⁷ Although Dr. Hoberman additionally diagnosed respondent with narcissistic personality disorder and psychopathy (Gov't Ex. 2 at 64-65), and Dr. Saleh also diagnosed respondent with a history of heroin, cannabis, cocaine, methamphetamine, and alcohol abuse (Resp't Ex. 1 at 10), the court finds that it has not been shown by clear and convincing evidence that respondent suffers from any of these conditions.

C. Serious Difficulty Refraining

To meet its burden of establishing that respondent is “sexually dangerous to others,” the government must also prove that respondent, if released, “would have serious difficulty in refraining from sexually violent conduct or child molestation” as a result of his serious mental illness, abnormality, or disorder. 18 U.S.C. § 4247(a)(6). The determination under this prong requires the court to consider respondent’s volitional control over his actions understood in relation to his mental illness, and it is also informed by the constitutional constraints on the civil commitment scheme. In Kansas v. Crane, 534 U.S. 407 (2002), the United States Supreme Court held that in order to civilly commit someone for sexual dangerousness “there must be proof of serious difficulty in controlling behavior.” Id. at 413. The Supreme Court noted that this standard allows courts wide discretion in relying on a number of different factors relevant to sexual dangerousness. The standard does not have “a particularly narrow or technical meaning;” nor is it demonstrable with “mathematical precision.” Id.

As a result, the court does not construe this criterion for commitment to require proof of any statistical probability of reoffense. The Adam Walsh Act does not ask the finder of fact to determine exactly how likely the respondent is to reoffend, but whether he will have “serious difficulty” in refraining from doing so. Recidivism rates are circumstantially relevant to the serious difficulty inquiry because offenders who continually expose themselves to punishment may be presumed to have the most difficulty refraining from sexual reoffending. But the ultimate question called for by the Adam Walsh Act concerns the self-control of an individual, not the statistical re-arrest patterns of a given population. Thus, the court considers the

recidivism rates associated with respondent's actuarial scores,⁸ but affords them less weight than respondent's past and current conduct, and the testimony of the experts as a whole.

Here, both Dr. Cunic and Dr. Hoberman testified that in their opinions, respondent would have serious difficulty in refraining from child molestation if released. In contrast, Dr. Saleh opined that respondent would not have serious difficulty in refraining from child molestation if he were to be released. In reaching his conclusion with regard to this issue, Dr. Saleh emphasized the effect of respondent's age on his risk of reoffense. Respondent was fifty-nine years old at the time of the evidentiary hearing. Dr. Saleh pointed out that "age and sexual recidivism are inversely correlated. That is, the risk to recidivate sexually decreases steadily with the aging process, especially in . . . extra-familial child molesters." (Resp't Ex. 1 at 12.)

Drs. Cunic and Hoberman testified that they also considered respondent's advancing age as a possible mitigating factor in his risk assessment. However, they both determined that there would be not be a significant decrease in respondent's estimated risk for sexual recidivism as a function of the interaction between respondent's particular past sexual offending history and his

⁸ Dr. Hoberman used several actuarial instruments during the course of his evaluation, including the Static-99, the Hare Psychopathy Checklist-Revised ("PCL-R"), the Minnesota Sex Offender Screening Tool-Revised ("MnSOST-R"), the Sex Offender Risk Appraisal Guide, the Sexual Violence Risk-20, and the Structured Risk Assessment: Forensic Version. (Gov't Ex. 2 at 78-85.) He concluded that respondent's score on the Static-99 placed him in the high risk category, comparing him to a group of offenders who recidivated at a rate of 52% over fifteen years. (*Id.* at 79.) Dr. Hoberman rated respondent on the PCL-R, giving him a prorated total score of 31 and concluding that respondent should be regarded as a psychopath. (*Id.* at 64-65, 83.) He also gave respondent a score on the MnSOST-R that is statistically associated with a moderate likelihood of reoffense; the recidivism rate associated with this score is 25-47% over six years. (*Id.* at 80.) Dr. Hoberman further found that the other instruments he utilized provided support for the conclusion that respondent is a sexually dangerous person.

Dr. Cunic gave respondent a score of 5 on the Static 99-R actuarial instrument, which placed him in the moderate-high risk category for sexual reoffense. (Gov't Ex. 4 at 8-9.)

Dr. Saleh assessed respondent using the Static-99 and the Static-99R. At the evidentiary hearing, he testified that his report contains a scoring error. He stated that respondent should have received a score of 2 instead of 3 in the category of prior sex offenses and that, as a result, respondent's overall score on the Static-99 should have been reduced from 6 to 5. (*See* Resp't Ex. 1 at 10-11.) Similarly, respondent's overall score on the Static-99R should have been reduced from 5 to 4. (*Id.* at 12-13.) Dr. Saleh did not correlate respondent's total scores to a nominal category nor did he quantify respondent's risk level. (*Id.* at 10.)

increasing age. The court agrees with the government's experts and finds that respondent differs from the typical recidivist whose risk of sexual dangerousness decreases with age because respondent was charged with sexual offenses relating to two separate victims when he was at least fifty years old. (See Gov't Exs. 13, 17.) Additionally, when he was in his late forties, respondent was associating with minors within a short time of his release from prison in 2001 despite the fact that the conditions of his probation prohibited such contact. (See, e.g., Gov't Ex. 20 at 12-13.) Thus, the court does not consider respondent's advancing age to be a protective factor that would reduce his risk of sexual recidivism if he is released.⁹

Furthermore, the court gives significant weight to certain factors that Drs. Cunic and Hoberman took into account in concluding that respondent will have serious difficulty in controlling his behavior. At the evidentiary hearing, Drs. Cunic and Hoberman identified several factors that they believe increase respondent's risk of sexual reoffense, including his impulsivity and poor self-regulation, his failure to cooperate with supervision, and his persistence in engaging in risk-taking behaviors despite prior legal sanctions. Dr. Cunic emphasized respondent's diagnosis of personality disorder, not otherwise specified, with antisocial traits and testified that respondent has been highly motivated and driven to manipulate others for his own gain. He has also demonstrated a pattern of fulfilling his own needs at the expense of other people. At the hearing, Dr. Cunic stated her belief that this pattern began decades ago when respondent began promoting and compelling prostitution of females under the age of eighteen.

The court acknowledges that, in and of itself, respondent's personality disorder does not

⁹ All three experts also testified that although respondent suffers from several physical ailments, including high blood pressure, hepatitis C, and chronic obstructive pulmonary disease, none of these medical conditions would prevent him from sexually reoffending.

necessarily contribute to his risk of sexual recidivism. However, when combined with a history of sexual attraction to prepubescent females,¹⁰ the traits associated with respondent's personality disorder do raise the risk of recidivism. Callousness, a lack of empathy, egocentricity, and impulsivity are all traits that make one likely to hurt others for one's own gratification. Respondent also shows little insight into his mental condition or accountability for his past sexual behavior, including his 1989 conviction for sexual abuse in the second degree. He appears to have persistently rationalized his past by stating that his accusers were seeking to retaliate against him or were being manipulated to make false allegations against him. Thus, the court finds that the testimony of the government's experts supports the conclusion that respondent will have serious difficulty in refraining from child molestation if released.

Moreover, the court does not have any evidence of positive progress by respondent in a sex offender treatment program. Respondent was ordered to undergo sex offender treatment as part of his sentence for failure to comply with sex offender registry requirements (see Gov't Ex. 20 at 12), but there is no record that he completed such treatment. Respondent told both Dr. Saleh¹¹ and Dr. Hoberman that he received sex offender therapy while he was incarcerated in Iowa; however, he also told Dr. Hoberman that he did not admit to being a sex offender while he was in treatment. (Gov't Ex. 2 at 34, 54-55.) Additionally, he has refused subsequent opportunities for sex offender treatment. The only evidence that this court has of any meaningful engagement in a sex offender program is respondent's statement to Dr. Hoberman

¹⁰ The court notes that the risk assessment offered by Dr. Saleh is particularly unreliable in the present case because he assumed that respondent does not suffer from pedophilia, a premise which the court has rejected.

¹¹ Although Dr. Saleh's report states that respondent has not participated in sex offender therapy (Resp't Ex. 1 at 9), Dr. Saleh testified at the evidentiary hearing that the inclusion of this statement was a drafting error and that respondent had actually reported engaging in sex offender treatment.

that he understands “red flags.” (Gov’t Ex. 2 at 34, 56.) This single statement is simply insufficient to demonstrate what, if anything, respondent may have learned while in treatment.¹² Furthermore, although respondent’s sister testified at the evidentiary hearing that she is willing to assist her brother if he is released, respondent has no plausible release plan that would appropriately address his needs for post-release housing, employment, and treatment for his sexual issues.

While this case stands apart from others where respondents have incurred more convictions for sexual misconduct, such convictions are not an indispensable element of the government’s case for commitment under the Adam Walsh Act, although they obviously have significant evidentiary value where proof of the convictions is available. Rather, the focus remains on the impact of mental illness on volition. On the record in this case, the court concludes that the government has proven by clear and convincing evidence that respondent suffers from pedophilia and from a personality disorder, not otherwise specified, with antisocial traits. The government has also proven that these conditions presently impair respondent’s volitional ability to refrain from deviant behavior and that, absent abatement by effective treatment, would in the future give him serious difficulty in refraining from actual child molestation. Accordingly, the court concludes that the government has met its burden of proving the third element under the Adam Walsh Act by clear and convincing evidence.¹³

¹² Both Dr. Cunic and Dr. Hoberman believe that respondent currently needs to participate in sex offender treatment. (See Gov’t Exs. 2 at 89; 4 at 12.)

¹³ The court has also considered the fact that respondent has been ordered to complete a three-year term of supervised release after he is released from federal custody on his most recent conviction. (Gov’t Ex. 29.) The court finds that the term of supervised release is not sufficient to overcome all of the evidence in this case which demonstrates that respondent will have serious difficulty in refraining from child molestation if released.

III. CONCLUSION

For the foregoing reasons, the court finds, by clear and convincing evidence, that respondent is a sexually dangerous person under the Adam Walsh Act. It is hereby ORDERED that respondent be committed to the custody of the Attorney General for care and treatment pursuant to 18 U.S.C. § 4248.

This 6 September 2012.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge